

April 30, 2020

Hon. John M. Mulvaney  
Director  
The Office of Management and Budget  
725 17th Street N.W.  
Washington, D.C. 20503

**RE: Request for Review of USCIS' Revisions to Form I-765, Application for Employment Authorization**

Dear Director Mulvaney:

Pursuant to 44 U.S.C. § 3517(b), and on behalf [REDACTED] and Pangea Legal Services (Petitioners), we respectfully request your review of revisions made by the U.S. Citizenship and Immigration Services (USCIS) to Form I-765, Application for Employment Authorization, and Instructions for Form I-765.<sup>1</sup> USCIS uses Form I-765 to determine eligibility for an Employment Authorization Document (EAD), which permits certain foreign nationals in the United States to work for specific periods. USCIS' amendments to the form impose onerous, duplicative, and wholly unnecessary paperwork collection requirements on often vulnerable applicants for employment authorization. They are thus just the type of inefficient, bureaucratic paperwork requirement that Congress enacted the Paperwork Reduction Act (PRA) to remedy.

The requirements Petitioners challenge here pertain to applicants with pending asylum claims who are eligible for an EAD pursuant to 8 C.F.R. § 274a.12(c)(8) ((c)(8) applicants). The relevant USCIS revisions require these asylum applicants, when applying for employment authorization, to “submit evidence of *any arrests* and/or *convictions*,” including “a *certified* copy of *all* arrest reports, court dispositions, sentencing documents, and *any other relevant documents*.”<sup>2</sup> The sweeping requirements thus impose across-the-board and up-front demands that all applicants must supply USCIS with a vast array of official records, sometimes from foreign governments. As Petitioners here can attest, these information requirements impose significant costs and inflict real hardship on many.<sup>3</sup>

USCIS instituted these broad and ill-defined demands for all records relating to arrests and convictions despite the fact that these EAD applicants are legally eligible for work

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<sup>1</sup> Specifically, Petitioners request review of the following revisions by USCIS to Form I-765: as proposed at 82 Fed. Reg. 47,761 (Oct. 13, 2017) and 83 Fed. Reg. 5643 (Feb. 8, 2018), and approved by OIRA on May 31, 2018 (ICR number 201802-1615-001).

<sup>2</sup> U.S. Citizenship and Immigration Servs., *Form I-765, Instructions for Application for Employment Authorization*, p. 21 (Dec. 26, 2019), <https://www.uscis.gov/sites/default/files/files/form/i-765instr.pdf> (Form I-765 Instructions) (emphasis added).

<sup>3</sup> See [REDACTED] Decl. ¶¶ 7-12; see also Pangea Legal Services Decl. ¶¶ 6-10.

authorization without regard to past *arrests* and even with certain prior *convictions*;<sup>4</sup> they have necessarily undergone criminal background checks prior to applying for work authorization and may be required to undergo similar criminal background checks as part of their EAD applications;<sup>5</sup> and without appropriate, if any, regard to the costs and burdens the new requirements will inflict on applicants, as well as the agency.

For those reasons, and as explained further below, the collection of information is not necessary for the proper performance of USCIS;<sup>6</sup> it demands the collection of duplicative information;<sup>7</sup> and it otherwise conflicts with the congressional purposes reflected in the PRA.<sup>8</sup> Congress entrusted the Office of Management and Budget (OMB) with the statutory responsibility to remedy such bureaucratic overreach with respect to paperwork demands.<sup>9</sup> Petitioners therefore respectfully request that OMB review the collection of information, relieve Petitioners of the burden of complying with the collection of information, and take all other appropriate remedial action.<sup>10</sup> Petitioners appreciate the many demands currently facing OMB, but respectfully request attention to this matter as soon possible given the ongoing burden that these information requirements impose on Petitioners and other vulnerable persons.

## I. BACKGROUND OF PETITIONERS

██████████ is an asylum applicant who fled to the United States from ██████████.██████████<sup>11</sup> ██████████ wishes to apply for an EAD based on his pending asylum application, as permitted by 8 C.F.R. § 274a.12(c)(8), in order to support himself and his family.<sup>12</sup> ██████████, however, was arrested and subsequently convicted of a misdemeanor ██████████, and due to the difficulty of collecting

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<sup>4</sup> “[A]n applicant for asylum who is not an aggravated felon shall be eligible” for work authorization. 8 C.F.R. § 208.7(a)(1).

<sup>5</sup> U.S. Citizenship and Immigration Servs., *Asylum Background and Security Checks FAQ*, <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40080> (last visited Apr. 17, 2020); Form I-765 Instructions at p. 15.

<sup>6</sup> See 44 U.S.C. § 3508 (“Before approving a proposed collection of information, the Director shall determine whether the collection of information ... is necessary for the proper performance of the functions of the agency....”).

<sup>7</sup> See *Id.* § 3506(c)(3)(B) (“[E]ach agency shall ... certify ... that each collection of information submitted ... is not unnecessarily duplicative of information otherwise reasonably accessible to the agency.”).

<sup>8</sup> See *Id.* § 3501 (describing the purposes of the PRA, which include, among other things, minimizing paperwork burdens on individuals, maximizing the utility of information collected, coordinating document collection with other agencies, and minimizing costs to the federal government).

<sup>9</sup> *Id.*

<sup>10</sup> See *Id.* § 3517(b) (“Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this subchapter, a person shall maintain, provide, or disclose the information to or for the agency. Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—(1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and (2) take appropriate remedial action, if necessary.”).

<sup>11</sup> ██████████ Decl. ¶ 1.

<sup>12</sup> *Id.* ¶ 2.

certified copies of his criminal records, he has been unable to apply for an EAD.<sup>13</sup> USCIS' changes to Form I-765 thus directly affect [REDACTED].

Pangea Legal Services is a nonprofit organization that offers low and no cost immigration legal services, as well as advocacy efforts, on behalf of noncitizens.<sup>14</sup> Among the services that Pangea provides is assisting noncitizens with filing applications for an EAD, including individuals applying under category (c)(8) who have been arrested and/or convicted of criminal offenses.<sup>15</sup> The revisions to Form I-765 have forced Pangea to shift resources from other services it provides to instead support EAD applications.<sup>16</sup> USCIS' changes to Form I-765 thus directly affect Pangea's clients, and Pangea's allocation of staff resources.

## II. PURPOSES OF THE PAPERWORK REDUCTION ACT

Congress enacted the PRA in 1980 to reduce the often crushing burden that federal paperwork requirements can impose on individuals and small businesses.<sup>17</sup> "The Paperwork Reduction Act was enacted in response to one of the less auspicious aspects of the enormous growth of our federal bureaucracy: its seemingly insatiable appetite for data. Outcries from small businesses, individuals, and state and local governments, that they were being buried under demands for paperwork, led Congress to institute controls."<sup>18</sup>

To achieve those congressional purposes, the PRA "prohibits any federal agency from adopting regulations which impose paperwork requirements on the public unless the information is not available to the agency from another source within the Federal Government ... Agencies are also required to minimize the burden on the public to the extent practicable."<sup>19</sup> Thus, for all covered collections of information by the federal government, agencies must "certify ... that each collection of information ... is not unnecessarily duplicative of information otherwise reasonably accessible to the agency[.]"<sup>20</sup> Avoiding unnecessary duplication advances the PRA's "focus on minimizing burden[s]" to the public and the government.<sup>21</sup>

Furthermore, any new collection of information by an agency must be "necessary for the proper performance of the functions of the agency."<sup>22</sup> A collection is "necessary for the proper performance" of the agency if it: reduces paperwork burdens on the public; eliminates

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<sup>13</sup> *Id.* ¶¶ 11-12.

<sup>14</sup> Pangea Legal Services Decl. ¶ 2.

<sup>15</sup> *Id.* ¶¶ 4-5.

<sup>16</sup> *Id.* ¶¶ 7-9.

<sup>17</sup> 44 U.S.C. § 3501(1).

<sup>18</sup> *Dole v. United Steelworkers of Am.*, 494 U.S. 26, 32 (1990); *see also Tozzi v. EPA*, 148 F. Supp. 2d 35, 38 (D.D.C. 2001) ("The PRA was enacted to reduce and streamline the administrative burden created by superfluous paperwork resulting from government information collection requests.").

<sup>19</sup> *Dole*, 494 U.S. at 32-33.

<sup>20</sup> 44 U.S.C. § 3506(c)(3)(B).

<sup>21</sup> H.R. REP. NO. 104-37, at 40 (1995).

<sup>22</sup> 44 U.S.C. § 3508.

duplicative filings; coordinates interagency collections of records requests; and is an efficient and effective collection of requested information.<sup>23</sup> “To the extent, if any, that the Director determines that the collection of information by an agency is unnecessary for any reason, the agency may not engage in the collection of information.”<sup>24</sup>

To help carry out the purposes of the PRA, Congress created a petition procedure. Affected persons may petition the OMB Director to “review any collection of information conducted by or for an agency to determine if ... a person shall maintain, provide or disclose the information to or for the agency.”<sup>25</sup> One ground for such a petition is to ask the Director to determine whether a previously approved collection of information conflicts with the requirements of the PRA.<sup>26</sup> The Director must respond to such a petition within 60 days with a determination as to whether or not the petitioner is obligated to provide the requested records, unless the Director extends the response time to a specified date and gives notice to the petitioner.<sup>27</sup> The Director may also “take appropriate remedial action, if necessary” to remedy any PRA violations, including staying or rescinding the collection of information.<sup>28</sup> Additionally, on its own initiative, OMB may review a collection of information when the “burden estimates provided by the agency ... were materially in error,”<sup>29</sup> and if the estimates were flawed, “may stay the effectiveness of its prior approval of any collection of information.”<sup>30</sup>

### III. FORM I-765 AND USCIS’ NEW COLLECTION OF INFORMATION

The collection of information which Petitioners seek review of relates to applications for work authorization by certain foreign nationals. Under federal law, certain noncitizens must apply to USCIS for authorization to hold employment in the United States by filing a Form I-765, Application for Employment Authorization.<sup>31</sup> To submit Form I-765, noncitizens must provide specified information to USCIS, depending on the eligibility category which they fall

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<sup>23</sup> See S. REP. NO. 104-8, at 53 (1995) (defining “necessary for the proper performance” as “reducing burden, eliminating duplication, coordinating interagency collections, and overseeing the efficient and effective use of information collected by and for Federal agencies”); see also 44 U.S.C. § 3501.

<sup>24</sup> 44 U.S.C. § 3508.

<sup>25</sup> *Id.* § 3517(b).

<sup>26</sup> See, e.g., *Hyatt v. Office of Mgmt. & Budget*, 908 F.3d 1165, 1169 (9th Cir. 2018) (plaintiff filed a Section 3517(b) petition with the Director of OMB arguing that a collection of information violated the PRA).

<sup>27</sup> 44 U.S.C. § 3517(b); *Hyatt*, 908 F.3d at 1174.

<sup>28</sup> 44 U.S.C. § 3517(b).

<sup>29</sup> 5 C.F.R. § 1320.10(f).

<sup>30</sup> *Id.* § 1320.10(g).

<sup>31</sup> U.S. Citizenship and Immigration Servs., *Supporting Statement for Application for Employment Authorization*, OMB Control No.: 1615-0040 (uploaded May 30, 2018), available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201802-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201802-1615-001).

into.<sup>32</sup> If the Application for Employment Authorization is approved, USCIS issues an EAD (Form I-766), which certifies to employers that the individual may be lawfully employed.<sup>33</sup>

Prior to 2017, USCIS did not require applicants to provide arrest and conviction records when filing a Form I-765.<sup>34</sup> But on October 13, 2017, USCIS published a new set of revisions to Form I-765 (effective May 31, 2018).<sup>35</sup> These revisions required eligibility category (c)(8) applicants—individuals with pending asylum applications—to submit documentation of “any arrests and/or convictions” with their EAD applications.<sup>36</sup> USCIS further specified that applicants must “[p]rovide a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents.”<sup>37</sup> This new paperwork requirement came amid other measures by the Trump Administration to limit access to asylum.<sup>38</sup>

As a result of these changes, (c)(8) applicants must now provide excessive information relating to any and all prior arrests and convictions. As described below, and if applied to the Petitioners, these new requirements violate the PRA because the overbroad demands will capture minor and unrelated infractions not needed to decide an applicant’s eligibility for work authorization, increase costs to the federal government and Petitioners, decrease USCIS’ capability to effectively and efficiently screen applicants, and unnecessarily duplicate information already accessible to USCIS through its own and other agencies’ prior background checks on these applicants.

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<sup>32</sup> U.S. Citizenship and Immigration Servs., *Form I-765, Application for Employment Authorization*, p. 3 (Dec. 26, 2019 ed.), <https://www.uscis.gov/i-765>.

<sup>33</sup> U.S. Citizenship and Immigration Servs., *Supporting Statement for Application for Employment Authorization*, OMB Control No.: 1615-0040 (uploaded May 30, 2018), available at [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201802-1615-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201802-1615-001).

<sup>34</sup> In 2017, prior to the new criminal records requirements for category (c)(8), USCIS began requiring a similarly broad range of criminal records from those eligible for EADs in categories (c)(35) and (c)(36). See Form I-765 Instructions at pp. 8, 10. While also unnecessary and unduly burdensome, that record collection is beyond the scope of this petition.

<sup>35</sup> 82 Fed. Reg. 47,761 (Oct. 13, 2017); 83 Fed. Reg. 5643 (Feb. 8, 2018).

<sup>36</sup> Form I-765 Instructions at p. 21.

<sup>37</sup> *Id.*

<sup>38</sup> For example, in November 2018, President Trump issued a proclamation barring those who enter the United States between ports of entry from applying for asylum. Presidential Proclamation No. 9822, 83 Fed. Reg. 57,661 (Nov. 9, 2018). In January 2019, the Department of Homeland Security (DHS) implemented protocols to force asylum seekers arriving at the U.S.-Mexico border to remain in Mexico while an immigration judge considers their asylum claims. See Memorandum from Kirstjen M. Nielsen, Sec’y, U.S. Dep’t of Homeland Security, *Policy Guidance for Implementation of the Migrant Protection Protocols* (Jan. 25, 2019), [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf). In July 2019, the Administration published an Interim Final Rule banning all individuals who pass through another country without seeking protection in that country from asylum in the United States. 84 Fed. Reg. 33,829 (July 16, 2019).

#### **IV. THE COLLECTION OF INFORMATION VIOLATES THE PRA AS APPLIED TO (C)(8) APPLICANTS WITH PENDING ASYLUM CLAIMS, SUCH AS [REDACTED]**

USCIS' May 31, 2018 collection of information (ICR number 201802-1615-001) is not necessary for the proper performance of the agency and is unnecessarily duplicative of information otherwise reasonably accessible to the agency, as applied to applicants with pending asylum claims. USCIS thus violated the PRA when it imposed the new collection of information in Form I-765 on applicants like [REDACTED].

##### **A. The New Collections of Information Is Not Necessary For The Proper Performance Of USCIS**

USCIS' collection of information is overbroad, unduly burdensome, vague, and not necessary for the performance of the agency. For [REDACTED]—who has a pending asylum claim—enforcing the collection of information would violate the PRA, and therefore he should not be required to “[p]rovide a certified copy of all arrest reports, court dispositions, sentencing documents, and any other relevant documents” with Form I-765.<sup>39</sup>

To begin with, this information mandate is unnecessary to fulfill USCIS' statutory mission. Under 8 C.F.R. § 208.7(a)(1), applicants with pending asylum claims are ineligible for employment authorization only if they were convicted of an “aggravated felon[y].” The new collection of information, however, requires applicants with pending asylum claims to provide certified copies of all *arrest* reports—no matter how inconsequential, old, or insignificant, and even where the arrest resulted in no conviction. To state the obvious, arrest reports and related arrest records are not necessary to determine if an applicant was *convicted* of an aggravated felony. And even as to convictions, the information requirement is wildly overbroad, where only aggravated felony convictions render an applicant ineligible for an EAD. There is no justifiable reason that all records related to any criminal conviction are required to adjudicate a work authorization application—at least at the outset of an application and in every case.

The burden of collecting these unnecessary records is often significant. It is frequently difficult or even impossible to collect arrest and conviction records for myriad reasons, including: the destruction of older records; high costs associated with obtaining certified copies; long delays in obtaining records from overburdened court staff; the burden of traveling to distant courts and jurisdictions; differing record-keeping practices by courts and police departments; and varying court or police department requirements for seeking records, such as requirements that the applicant use a particular form or appear in person. A court order is often required to obtain sealed criminal records.

Furthermore, nothing in Form I-765 or the accompanying instructions provides guidance to applicants as to what constitutes a “certified copy” of the required records, nor does the Form define what “any supporting documentation” means.<sup>40</sup> The language of the requirements is

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<sup>39</sup> Form I-765 Instructions at p. 21.

<sup>40</sup> *Id.*

vague, overbroad, ill-defined, and may cause confusion, further increasing the burden on applicants.

Placing this improper burden on applicants with a pending asylum application is particularly egregious because it could put the applicant at risk, in violation of U.S. law and treaty obligations. Asylum is a protection granted to those who are unable or unwilling to return to their country of origin because they have suffered past persecution or have a well-founded fear of future persecution.<sup>41</sup> The obligation to accept and protect asylees is codified in both U.S. and international law,<sup>42</sup> and U.S. asylum policy “reflects one of the oldest themes in America’s history—welcoming homeless refugees to our shores.”<sup>43</sup> Yet pursuant to this records requirement, an asylum applicant may be forced to obtain official records from the country where he or she fears persecution.

For example, in 2017—the latest year which DHS provides official asylum application numbers for—El Salvador was the country of origin for 8.5% of all affirmative asylum applicants and 29.6% of all defensive asylum applicants.<sup>44</sup> El Salvador has the highest intentional homicide rate in the world,<sup>45</sup> as well as problems with police and government misconduct and corruption.<sup>46</sup> Requiring an individual to retrieve certified criminal records from El Salvador may thus be not only burdensome, but also dangerous. Similarly, for Chinese Uighurs seeking asylum in the U.S. from state repression in China,<sup>47</sup> being forced to collect certified copies of criminal records from Chinese authorities may be dangerous not only for the applicant, but also for family still in China.<sup>48</sup> The collection of information is thus more than simply unduly burdensome—in some cases it is dangerous and may conflict with U.S. and international law.

Finally, requiring noncitizens to produce criminal records may impermissibly relieve the government of its burden in removal proceedings of establishing that the noncitizen is

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<sup>41</sup> 8 U.S.C. § 1158.

<sup>42</sup> See, e.g., Refugee Act, Pub. L. No. 96-212, 94 Stat. 102 (1980), which amended the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in sections of 8 U.S.C.), and codified UN General Assembly, *Convention Relating to the Status of Refugees*, 189 U.N.T.S. 137 (July 28, 1951), and UN General Assembly, *Protocol Relating to the Status of Refugees*, 606 U.N.T.S. 267 (Jan. 31, 1967).

<sup>43</sup> S. REP. NO. 96-256, at 1 (1979); see also *Grace v. Whitaker*, 344 F. Supp. 3d 96, 104 (D.D.C. 2018) (“When Congress passed the Refugee Act in 1980, it made its intentions clear: the purpose was to enforce the ‘historic policy of the United States to respond to the urgent needs of persons subject to persecution in their homelands.’”).

<sup>44</sup> U.S. Dep’t of Homeland Security, *Annual Flow Report, Refugees and Asylees: 2017* (March 2019), [https://www.dhs.gov/sites/default/files/publications/Refugees\\_Asylees\\_2017.pdf](https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2017.pdf).

<sup>45</sup> United Nations Office on Drugs and Crime, *Intentional Homicide Victims*, <https://dataunodc.un.org/crime/intentional-homicide-victims> (last visited April 29, 2020).

<sup>46</sup> Human Rights Watch, *World Report 2019: El Salvador*, <https://www.hrw.org/world-report/2019/country-chapters/el-salvador> (last visited April 29, 2020).

<sup>47</sup> Sarah Parvini, ‘They Want to Erase Us.’ *California Uighurs Fear for Family Members in China*, L.A. TIMES (Aug. 9, 2019), <https://www.latimes.com/local/lanow/la-me-california-uighur-muslims-china-20190610-story.html>.

<sup>48</sup> Lindsay Maizland, Council on Foreign Relations, *China’s Repression of Uighurs in Xinjiang* (Nov. 25, 2019), <https://www.cfr.org/backgrounder/chinas-repression-uighurs-xinjiang>.

deportable.<sup>49</sup> The Immigration and Nationality Act specifically requires the *government* to produce precisely the sorts of criminal records that USCIS is unnecessarily demanding from EAD applicants here in the first instance.<sup>50</sup>

Invalidating this collection of information will not hinder USCIS’ mission, but would instead aid it. As noted, and discussed in greater detail below, (c)(8) applicants must have already applied for asylum prior to applying for employment authorization,<sup>51</sup> so those applicants will necessarily have either undergone or will undergo a criminal background check.<sup>52</sup> If a USCIS agent processing an application then has questions regarding a conviction after reviewing the prior background check, they could require the applicant to provide pertinent arrest or conviction records. USCIS already has such a method in-place: the Request for Evidence (“RFE”) process.<sup>53</sup> When any noncitizen files an application for benefits with USCIS, the agency may request more information from the applicant if the initial evidence does not establish eligibility for the benefit.<sup>54</sup> But instead of minimizing applicants’ initial paperwork burden, as the RFE process does, the collection of information at issue here requires unneeded and voluminous paperwork up-front, flipping the PRA’s presumption that the government should limit paperwork requests on its head.

What is more, the new collection of information also increases the burden on the agency by requiring USCIS agents to process and review voluminous and irrelevant criminal records. Indeed, as USCIS recently made clear in a notice of proposed rulemaking, “[t]he growth of asylum receipts along with the growing asylum backlog has contributed to an increase in EAD applications for pending asylum applicants that has surpassed available Service Center Operations resources.”<sup>55</sup> Making overburdened USCIS agents review large numbers of unnecessary records will only increase delays in approving EADs, harming the agency, applicants, and potential employers of applicants. That is contrary to the PRA’s mandate that any new collection of information must “minimize the cost to the Federal Government.”<sup>56</sup>

██████████ case illustrates why USCIS’ revisions to Form I-765 are not necessary for the proper performance of the agency. After fleeing violence ██████████

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<sup>49</sup> See 8 U.S.C. § 1229a(c)(3)(A) (government has burden of establishing deportability by “clear and convincing evidence”).

<sup>50</sup> See *Id.* § 1229a(c)(3)(B) (listing documents and records that constitute proof of a criminal conviction for purposes of establishing a criminal ground of deportability).

<sup>51</sup> 8 C.F.R. § 208.7(a)(1).

<sup>52</sup> See 8 U.S.C. § 1158(d)(5)(A)(i) (“[A]sylum cannot be granted until the identity of the applicant has been checked against all appropriate records or databases maintained by the Attorney General and by the Secretary of State, including the Automated Visa Lookout System, to determine any grounds on which the alien may be inadmissible to or deportable from the United States, or ineligible to apply for or be granted asylum.”).

<sup>53</sup> 8 C.F.R. § 103.2(b)(8).

<sup>54</sup> *Id.*

<sup>55</sup> U.S. Citizenship and Immigration Servs., *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 84 Fed. Reg. 47,148, 47,153 (Sept. 9, 2019).

<sup>56</sup> 44 U.S.C. § 3501(5).



[REDACTED].<sup>57</sup> Seeking safety, he promptly applied for asylum.<sup>58</sup> His application is still pending, [REDACTED]. In [REDACTED], he was convicted of a misdemeanor [REDACTED].<sup>59</sup> Despite the fact that in order to be ineligible to receive an EAD, an individual with a pending asylum claim must have been convicted of an aggravated felony—which [REDACTED] was not—he must now retrieve certified criminal records of this sole arrest and conviction, which presents a significant burden to him and his family.

[REDACTED] must undertake a number of onerous steps to collect and submit certified records of his arrest and subsequent conviction. [REDACTED]

[REDACTED]

In addition to the financial hardship that USCIS' revisions to Form I-765 will impose on him, there is no need for [REDACTED] to obtain these records in the first place; immigration authorities already possess his criminal records. [REDACTED]

[REDACTED] Requiring [REDACTED] to pay for records that are not necessary for USCIS to decide his EAD application, and to which USCIS already has access, makes USCIS' revisions to Form I-765 and Instructions not only wholly unnecessary for the proper performance of USCIS' duties, but also cruel.

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<sup>57</sup> [REDACTED] Decl. ¶ 1.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* ¶ 6.

<sup>60</sup> *Id.* ¶ 7.

<sup>61</sup> *Id.* ¶ 9.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* ¶¶ 2-5.

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* ¶ 11.

<sup>67</sup> *Id.*

## B. The Collection of Information Is Unnecessarily Duplicative

The collection of information also violates the PRA because it is unnecessarily duplicative. The records needed to determine if an applicant with a pending asylum claim is an aggravated felon are likely already accessible to USCIS without requiring applicants to provide certified copies of *all* records related to any arrests and convictions. As mentioned above, under the Immigration and Nationality Act, the government is required to conduct background checks prior to granting an individual asylum.<sup>68</sup> Thus, when a noncitizen, such as ██████████, files for asylum, he or she undergoes the following background checks: (1) a copy of their Form I-589, Application for Asylum and for Withholding of Removal, is sent to the Department of State, which conducts its screening; (2) the applicant's information is sent to the FBI to run a background check, including through the FBI's Central Records System, which incorporates databases such as the Department of Justice's National Crime Information Center; (3) USCIS runs the individual's information against other law-enforcement databases; and (4) if between 12 years and 9 months of age and 79 years of age, the individual is fingerprinted and enrolled in the DHS Office of Biometric Identity Management's Automated Biometric Identification System.<sup>69</sup> Then, applicants with pending asylum claims must wait at least 150 days from filing their asylum application to file a Form I-765, and the government must wait an additional 30 days after receiving the Form I-765 before issuing an employment authorization, unless the application has already been recommended for approval.<sup>70</sup>

Furthermore, the updated Form I-765 Instructions state that EAD applicants may be required to provide biometric data, and are subject to "security checks, including a check of criminal history records maintained by the Federal Bureau of Investigation[.]"<sup>71</sup> "Standard" USCIS checks include, "but are not limited to":

Federal Bureau of Investigation (FBI) Next Generation Identification (NGI) Biometric Check; DHS Office of Biometric and Identity Management (OBIM) Automated Biometric Identification System (IDENT) Biometric Check; Department of Defense (DoD) Automated Biometric Identification System (ABIS) Biometric Check; ... FBI Central Records System (CRS) and Universal Index (UNI) Name Check; U.S. Customs and Border Protection (CBP) TECS Name Checks; Department of State (DOS) Consular Lookout and Support System (CLASS); and DOS Security Advisory Opinion (SAO). USCIS may also perform interagency checks with intelligence community partners for certain benefits.<sup>72</sup>

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<sup>68</sup> 8 U.S.C. § 1158(d)(5)(A)(i).

<sup>69</sup> U.S. Citizenship and Immigration Servs., *Asylum Background and Security Checks FAQs*, <https://www.uscis.gov/faq-page/asylum-background-and-security-checks-faq#t12818n40080> (last visited Apr. 29, 2020).

<sup>70</sup> 8 C.F.R. § 208.7(a)(1).

<sup>71</sup> Form I-765 Instructions at p. 15.

<sup>72</sup> Dep't of Homeland Security, Privacy Act of 1974; System of Records, 83 Fed. Reg. 36,950, 36,950 (July 31, 2018), <https://www.govinfo.gov/content/pkg/FR-2018-07-31/pdf/2018-16138.pdf>.

This existing asylum framework thus provides USCIS and the federal government with access to any relevant records needed to determine if an eligibility category (c)(8) applicant has been convicted of an aggravated felony, and, if necessary, the agency could issue an RFE to acquire further information. Given these resources, imposing a further burden on asylum applicants, such as ██████████, to acquire *all* arrest and conviction records is duplicative, and is the type of unneeded paperwork demand the PRA was enacted to combat.<sup>73</sup>

## VI. PANGEA LEGAL SERVICES HAS A CONCRETE INTEREST IN THIS PETITION

For the reasons given above, USCIS' collection of information is not necessary for the performance of its functions, and is unnecessarily duplicative of information otherwise reasonably accessible to the agency. Therefore, the collections of information must be rescinded under the PRA. Petitioner Pangea Legal Services has a concrete stake in that remedy. As explained in the attached declaration, Pangea, a nonprofit legal aid organization, provides low and no cost immigration legal services.<sup>74</sup> These services include assisting noncitizens who are filing applications for an EAD under eligibility category (c)(8) and have a criminal record.<sup>75</sup> Indeed, the lion's share of Pangea's clients apply for EADs under category (c)(8).<sup>76</sup>

USCIS' revisions to Form I-765 and the accompanying Instructions have impaired, seriously harmed, and otherwise frustrated Pangea's mission in a number of ways. First, the additional paperwork requirements have made it more difficult for Pangea's clients who are (c)(8) applicants to receive EADs, harming the clients both financially and emotionally, as well as Pangea's ability to assist them.<sup>77</sup> Second, Pangea attorneys and staff have been compelled to spend more time and resources assisting EAD applicants due to the changes in Form I-765 and its Instructions, including compiling unnecessary and duplicative certified copies of misdemeanor and other minor arrest and conviction records.<sup>78</sup> It now takes Pangea attorneys approximately an additional 1.5 hours of work per applicant arrest to gather certified records for a (c)(8) applicant.<sup>79</sup> Pangea may also advance or cover the cost of requesting certified records, a cost it did not face prior.<sup>80</sup> The extra time and cost associated with EAD applications following USCIS' revisions have forced Pangea to divert staff and resources from other services it provides, including services which would otherwise bring in grant money.<sup>81</sup> Pangea and its clients are thus directly and proximately harmed by USCIS' revisions to Form I-765.

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<sup>73</sup> 44 U.S.C. § 3506(c)(3)(B).

<sup>74</sup> Pangea Legal Services Decl. ¶ 2

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* ¶ 5.

<sup>77</sup> *Id.* ¶ 7.

<sup>78</sup> *Id.* ¶ 8.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* ¶ 9.

## VII. CONCLUSION

For the reasons set forth above, we respectfully request that, pursuant to 44 U.S.C. § 3517(b), OMB determine that Petitioners do not need to respond to the collection of information, and rescind its prior approval of USCIS' changes to Form I-765 requiring the submission of any and all certified criminal record documents. The information requests here are burdensome, overbroad, and unnecessary in many respects. They impose undue burdens on vulnerable categories of immigrants without sufficient justification. The information collections are thus emblematic of the type of overreaching government mandate the PRA was designed to address. Thank you for your attention to this petition. We stand ready to provide you with any further information you need to act.

Sincerely,

/s/

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